IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Civil Revision No. 60 of 2006

1. Manoj Agarwal S/o Sri J.P. Agarwal
   R/o C-8/44A Keshavpuram
   Lawrance Road
   New Delhi
2. Smt. Poonam Agarwal W/o Sri Manoj Agarwal
   R/o C-8/44A Keshavpuram
   Lawrance Road
   New Delhi ....Revisionists

Vs

1. Smt. Sushma Agarwal W/o Sri Munish Agarwal
   D/o Sri M.P. Garg
   R/o Amrawati Colony
   Tehsil & P.S. Haldwani
   Nainital
2. Sri Munish Agarwal S/o Sri J.P. Agarwal
   R/o C-8/44A Keshavpuram
   Lawrance Road
   New Delhi ...Respondents

Sri Pankaj Miglani, learned counsel for the revisionists

Hon'ble B.C. Kandpal, J.

This revision has been preferred by the revisionists – Sri Manoj Agarwal and Smt. Poonam Agarwal (*Tau & Tai*) of minor child challenging the order dated 19.09.2006 passed by Family Judge, nainital in Civil Case No. 19 of 2003 thereby deciding the issue No. 1 with regard to the jurisdiction to try the suit.

2. Brief facts of the case are that Smt. Sushma Agarwal guardian mother of the minor child who is aged about three years moved an application for custody of guardianship on the ground that the minor child is in the custody of Munish Agarwal – her husband, Manoj Agarwal her brother-in-law (*Jeth*) and Smt. Poonam Agarwal her sister-in-law (*Jethani*). It has further been averred in the application that since the husband is not participating in any of the proceedings pending

before the court concerned relating to the matrimonial deputes and the child is in the custody of the husband, brother-in-law and sister-in-law, therefore, she may be given the custody and guardianship of the minor child aged about 3 years.

3. The Family Judge decided the issue that the Family Judge, Nainital as the jurisdiction to try the suit.

4. Heard Sri Pankaj Miglani, learned counsel for the revisionists and perused the record.

5. Learned counsel for the revisionist has argued that in view of the provision of Section 9 of Guardians & Wards Act, 1890 this court has no jurisdiction to try the suit as the court where the minor ordinarily resides has jurisdiction to try the suit while in the instant case, the minor resides at Delhi and the mother who is claiming the custody of the minor child has been residing at Haldwani, District Nainital.

6. In support of this arguments, learned counsel for the revisionist placed before me following citations of Hon'ble Apex Court:-

1. ***Pooja Bahadur Vs Udai Bahadur*** reported in ***AIR 1999 Supreme Court 1741***

2. ***Anima Gupta Vs Tarun Kumar Gupta*** reported in ***AIR 2003 Allahabad 76***

3. ***Jagdish Chandra Gupta Vs Vimta Gupta*** reported in ***AIR 2003 Allahabad 317***

4. ***Shahnaz Shaharyari Vs Vijay Y. Gawande*** reported in ***AIR 1995 Bombay 30***

5. ***Harshadbhai Zinabhai Desai Vs Bhavnaben Harshadbhai Desai*** reported in ***AIR 2003 Gujarat 74***

7. I have considered all the rulings cited before me by learned counsel for the revisionists and I am of the view that the rulings cited by earned counsel for the revisionists for not apply to the facts and circumstances of the present case.

8. No law envisages that the mother is not a natural guardian of her child who is aged about three years. Therefore, it is an admitted case that the mother is the natural guardian of her child aged about three years. The Hon'ble Supreme Court in ***Kumar Vs Jahgirdar Vs Chetan K Ramatheertha*** reported in ***AIR 2001 S.C. 2179*** has specifically observed that in a matter relating to the custody of a minor child, the interest and welfare of the child is the paramount consideration and not the convenience or pleasure of the parties.

9. In view of the aforesaid decision of the Hon'ble Apex Court, I am of the view that the impugned order passed by the Family Court is absolutely justified. I am also of the view that the Judge Family Court, Nainital has jurisdiction to try the suit.

10. Thus the revision lacks merit and is liable to be dismissed.

11. Accordingly, the revision is dismissed in-limine.

12. Consequently, the Stay Application No. 12850 of 2006 is also disposed of.

(B.C. Kandpal, J.)

13.10.2006
ASWAL